

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Coy PHILIPS et. al.,
 Petitioners,
 v.
 DAVID L. WINN, et.al.,
 Respondents.

CASE NO.

2005 APR 11 P 2 07

MOTION FOR CLASS ACTION
CERTIFICATION**05-40063 GAO**

COMES NOW the Petitioner Coy PHILIPS pursuant to Rule 23 of the Federal Rules of Civil Procedure and moves this Court to certify as a Class, and Sub Classes, all current, and past, unconvicted Federal Civil Mental Patients confined in the U.S. Bureau of Prison System to be protected by the U.S. Constitution and the Laws of the United States.

* Petitioners alleges the class is so numerous that joinder of all members is impracticable because there are approximately 1500 currently incarcerated Civil Mental Patients in the Prison system who are committed under 18 U.S.C. § 4243 or 18 U.S.C. § 4246 and another 5000+ members who have been conditionally released on a regimen of conditions prescribed by B.O.P. Employees;

* Petitioners alleg there are questions of Law, or Fact, common to the causes in that all are or have been committed under the Federal Mental Health laws and all have been treated as convicted and sentenced prisoners under Rules and regulations established for only convicted prisoners;

* Petitioners allege that what is suffered by one has been suffered by all and the defense of claim of one is the claim and defense for all;

* Petitioners have requested an appointment of counsel under Rule 23(g) of the Federal Rules of Civil procedure because of the Mental illness status of the Petitioners, and because the

representatives of the Class may be taking Anti-Psychotic medication which limits and restricts adequate representation of the class and a counsel would not only be an attorney under the 6th Amendment but would also be a protection advocate under 42 U.S.C. §10841 et seq.

Petitioners also allege that individual prosecution of the issues would result in inconsistent judgments incompatible with others of the class, and the judgment of a individual case might impair the judgment of other cases so that the interest of the class would be impaired.

The petitioners also allege that the B.O.P. may transfer, or release, any representative at anytime for no reason or any reason at all which would impair the prosecution.

The petitioners respectfully request a Class Certification and Order the Respondents to comply with the Rule 23(c)(B) Notice by posting notices on all B.O.P. Bulletin Boards and distributing the Notice to all currently incarcerated members.

Petitioners request the Court Order the B.O.P. to notify all Federal Probation Officers to instruct the Probation Officers to notify those being supervised under the Mental Health Laws of this Class Action Lawsuit.

DATE: 4-7-05

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|-------------------------|---------|---|----------------------------|
| <u>Coy Phelps</u> | et al., | : | |
| Petitioner, | | : | |
| | | : | CASE NO: _____ |
| v. | | : | NOTICE |
| | | : | THAT PETITIONERS WILL |
| DAVID L. WINN, et. al., | | : | PETITION THE COURT FOR |
| Respondents. | | : | CLASS ACTION CERTIFICATION |
| | | : | |

PLEASE TAKE NOTICE

THAT the above Petitioners will petition the above Court (in the above case, on, or after, the date appearing below) for Class Action Certification pursuant to the terms of Rule 23 of the Federal Rules of Civil Procedure.

Petitioners allege the following:

1. The class may exceed 1500 unconvicted Civil Mental Patients who are currently incarcerated and imprisoned in the U.S. Bureau of Prisons;
2. The class may exceed 5000 unconvicted Civil Mental Patients who have been conditionally released from the U.S. Bureau of Prisons (since 1984) under a regimen prescribed by U.S. Bureau of Prison employees.
3. The class consists of all unconvicted Federal Civil Mental Patients committed under 18 U.S.C. § 4243 and 18 U.S.C. § 4246, and possibly, all those who were sent to a Federal Facility to be evaluated under 18 U.S.C. § 4243 or 18 U.S.C. § 4246.
4. There are questions of law and Fact common to the Class.
5. The claims of one are the claims of all.

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